

2.3.6366

**LAW OFFICES OF
LOUIS E. GITOMER**

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January 28, 2010

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600 BALTIMORE AVENUE
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(202) 466-6532
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Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D. C. 20423

RE: Finance Docket No. 35326. *CSX Transportation, Inc.—Trackage Rights
Exemption—Grand Trunk Western Railroad Company*

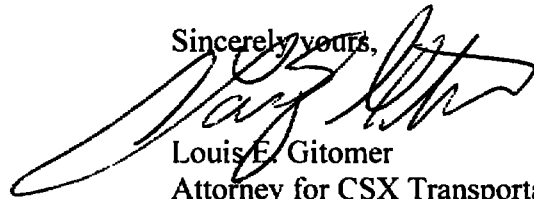
Dear Ms. Brown:

Enclosed for filing are the original and ten copies of a Verified Notice of Exemption under 49 C.F.R. § 1180.2(d)(8), a diskette with the file in WORD and pdf format, 20 extra copies of the map, and a check covering the \$1,200.00 filing fee for the Notice.

Please time and date stamp the extra copy of this letter and the Verified Notice of Exemption and return them with our messenger.

Thank you for your assistance. If you have any questions, please contact me.

Sincerely yours,



Louis E. Gitomer
Attorney for CSX Transportation, Inc.

Enclosures

FILED
JAN 28 2010
**SURFACE
TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35326

CSX TRANSPORTATION, INC.—TRACKAGE RIGHTS EXEMPTION—
GRAND TRUNK WESTERN RAILROAD COMPANY

VERIFIED NOTICE OF EXEMPTION

FEE RECEIVED

JAN 29 2010

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TRANSPORTATION BOARD

ENTERED
Office of the Clerk

JAN 28 2010

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Public Record

FILED

JAN 28 2010

SURFACE
TRANSPORTATION BOARD

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Attorneys for: CSX Transportation, Inc.

Dated: January 28, 2010

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35326

CSX TRANSPORTATION, INC.—TRACKAGE RIGHTS EXEMPTION—
GRAND TRUNK WESTERN RAILROAD COMPANY

VERIFIED NOTICE OF EXEMPTION

CSX Transportation, Inc. (“CSXT”) submits this Verified Notice of Exemption pursuant to the class exemption at 49 C.F.R. §1180.2(d)(7) for trackage rights over the rail line of the Grand Trunk Western Railroad Company (“GTW”) between Munster, IN, milepost 30.92, and Elsdon, IL, milepost 8.7, a distance of approximately 22.22 miles (the “Elsdon Subdivision”).¹ The parties have entered a written agreement for the trackage rights (Exhibit B), which are not sought as a responsive application in a rail consolidation proceeding.

CSXT is a subsidiary of CSX Corporation. GTW is a subsidiary of the Grand Trunk Corporation, which in turn is a subsidiary of the Canadian National Railway Company (“CN”).

Pursuant to the Surface Transportation Board’s (the “Board”) regulations at 49 C.F.R. § 1180.4(g), CSXT submits the following information:

Section 1180.6 Supporting Information

(a)(1)(i) Description of Proposed Transaction

CSXT is acquiring overhead trackage rights for the rail line of the GTW between Munster, IN, milepost 30.92, and Elsdon, IL, milepost 8.7, a distance of approximately 22.22

¹ CSXT’s predecessor, the Louisville and Nashville Railroad Company was authorized to operate two trains per day between Munster, IN and Thornton Junction, IL in *Louisville & N. R.*

miles.

CSXT anticipates using the trackage rights to reroute two train pairs per day (a total of four trains per day) from the Baltimore & Ohio Chicago Terminal's Blue Island Subdivision to the Elsdon Subdivision. CSXT anticipates using the trackage rights west of Thornton Junction to reroute two daily train sets (a total of four trains per day) from routes that CSXT currently utilizes in Chicagoland. CSXT expects to use the trackage rights to handle high-priority, service-sensitive intermodal freight that would benefit from improved customer service as a result of more consistent and reliable service and expedited transit times. Before the trains enter the Elsdon Subdivision CSXT must contact the dispatchers to ensure that the route over the Elsdon Subdivision is clear so that the train can run from the entry point to the exit point on the Elsdon Subdivision without being delayed by or delaying other trains.

The trackage rights will allow CSXT to handle trains between Thornton Junction and The Belt Railway Company of Chicago's ("BRC") Clearing Yard and CSX Intermodal's Bedford Park Intermodal Terminal over the Elsdon Subdivision. CSXT's initial plans are to reroute the two sets of approximately 5,000 foot long high priority intermodal UPS trains that originate or terminate at the Bedford Park Intermodal Terminal. These trains handle freight to and from the southeastern region of the United States served by CSXT.

Today, inbound UPS trains move between Thornton Junction and the Bedford Park Intermodal Terminal. From the south, the route begins at Thornton Junction, and travels over approximately 3.3 miles of CSXT and Union Pacific Railroad Company ("UP") jointly owned trackage between Thornton Junction, IL and Dolton, IL. North of Dolton, CSXT operates over approximately 7.7 miles of UP owned trackage between Dolton, IL and the 80th Street

interlocking in south Chicago, IL. From there, CSXT operates between 80th Street interlocking in south Chicago IL and the Bedford Park Intermodal Terminal over BRC trackage for a distance of approximately 4.4 miles.

This route is referred to as the “Current Route,” and the trip on the Current Route takes an average of 90 minutes. Outbound UPS trains follow the reverse route to Thornton Junction on their way to CSXT’s southeastern region. The Current Route is highly congested, handling 80 to 100 trains per day over various segments, and passes through Dolton, which is one of the densest and most congested points on the nation’s railroad system, handling trains of CSXT, UP, and the Norfolk Southern Railway Company, as well as several high-priority daily Amtrak intercity passenger trains.

After the trackage rights become effective, CSXT intends to reroute the two daily UPS train pairs onto the Elsdon Subdivision. The trains will enter the Elsdon Subdivision from the south at Thornton Junction and travel 13.5 miles until they reach the BRC at Hayford. The UPS train will then travel approximately 800 feet on BRC to the Bedford Park Intermodal Terminal. CSXT estimates that the trip over the Elsdon Subdivision will only take 40 minutes, a savings of approximately 50 minutes per UPS train. CSXT anticipates using the reverse route for the UPS trains from the Bedford Park Intermodal Terminal. In addition to the time savings, CSXT will reduce fuel consumption and will reduce congestion on the Current Route, providing some measure of relief to the existing, dense corridors through Dolton and the 80th Street interlocking in south Chicago.

The carriers involved in this transaction and their business addresses are:

CSX Transportation, Inc.
500 Water Street J-150
Jacksonville, FL 32202

Grand Trunk Western Railroad Company
17641 South Ashland Avenue
Homewood, IL 60430

Questions and correspondence concerning this notice may be addressed to:

Steven C. Armbrust
CSX Transportation, Inc.
500 Water Street J-150
Jacksonville, FL 32202
(904) 359-1229

Louis E. Gitomer
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Lou_Gitomer@verizon.net

(a)(1)(ii) Consummation Date

The transaction is scheduled to be consummated on or shortly after February 27, 2010.

(a)(1)(iii) Purpose Sought to be Accomplished

CSXT will reduce congestion on the Blue Island Subdivision and enhance the efficiency of its operation in the Chicago area as explained above.

(a)(5) List of States in which the Party's Property is Situated

CSXT owns and operates about 21,000 miles of railroad in the States of Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia, the District of Columbia, and the Provinces of Ontario and Québec.

GTW owns and operates about 642 miles of railroad in the States of Illinois, Indiana, and Michigan and the Province of Ontario.

The trackage rights are located in the States of Illinois and Indiana.

(a)(6) Map

A map illustrating the involved trackage rights is attached as Exhibit A.

(a)(7)(ii) Agreement

A redacted copy of the Trackage Rights Agreement is attached as Exhibit B. An unredacted copy of the Trackage Rights Agreement has been filed under seal.

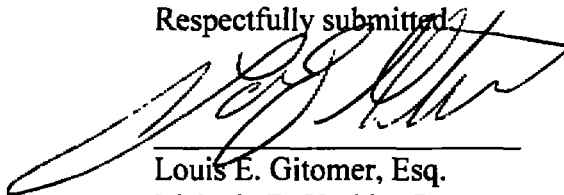
Labor Protection

Any employees of CSXT or GTW who are adversely affected by the acquisition of the trackage rights that are the subject of this Notice are entitled to protection under the conditions imposed in *Norfolk and Western Railway Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc. —Lease and Operate*, 360 I.C.C. 653 (1980).

Environmental and Historic Matters

Environmental and historic impacts associated with trackage rights transactions generally are considered to be insignificant. Therefore, environmental and historical reports and documentation normally need not be submitted for this type of transaction, pursuant to 49 C.F.R. § 1105.6(c)(4) and § 1105.8(b)(3).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Louis E. Gitomer', is written over a horizontal line.

Steven C. Armbrust, Esq.
CSX Transportation, Inc.
500 Water Street J-150
Jacksonville, FL 32202
(904) 359-1229

Louis E. Gitomer, Esq.
Melanie B. Yasbin, Esq.
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Lou_Gitomer@verizon.net

Attorneys for: CSX Transportation, Inc.

Dated: January 28, 2010

EXHIBIT A-MAP

Exhibit A

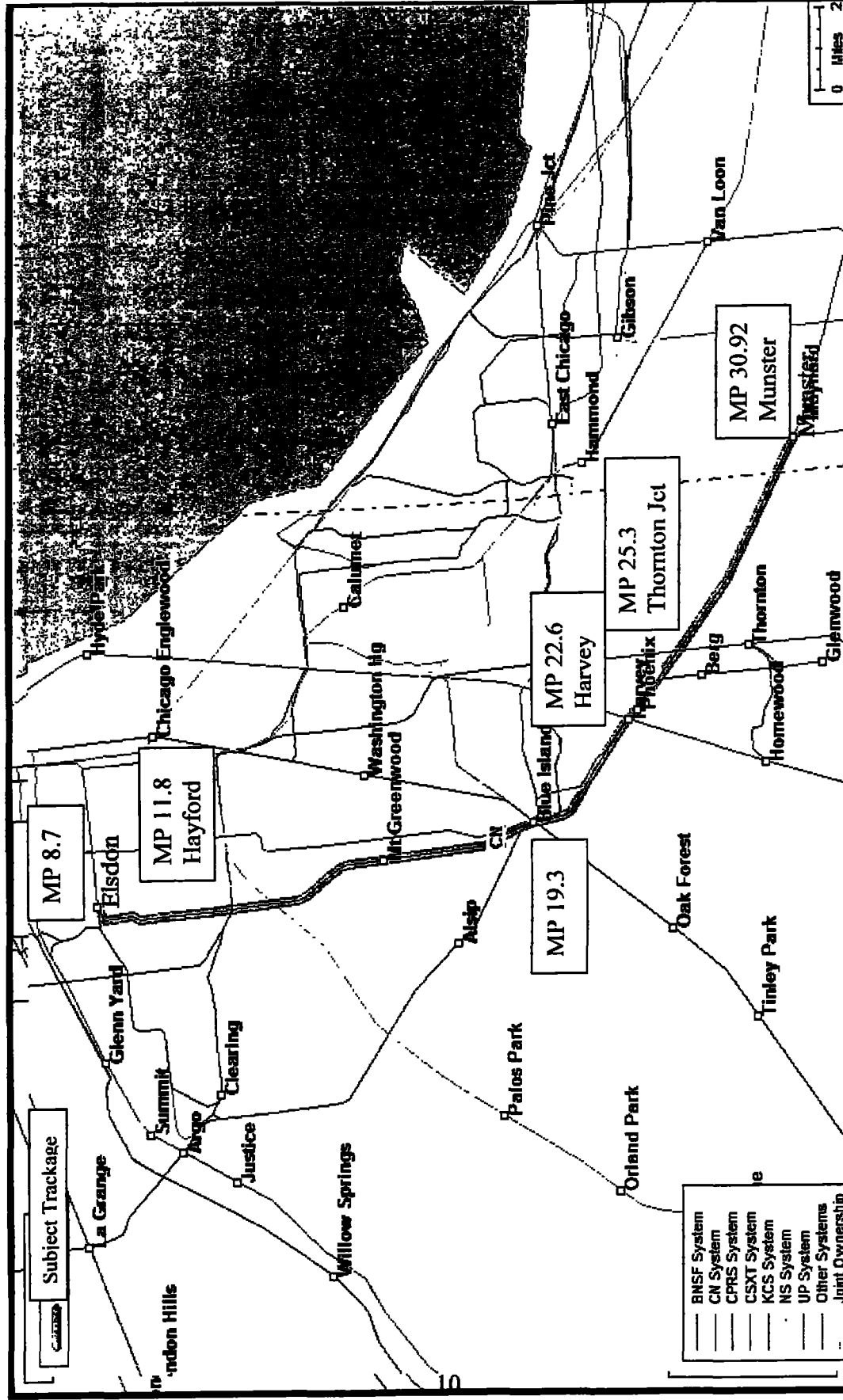


EXHIBIT B-AGREEMENT

TRACKAGE RIGHTS AGREEMENT

Agreement No. _____

between

GRAND TRUNK WESTERN RAILROAD COMPANY.

("GTW" or "Owner")

And

CSX TRANSPORTATION, INC

("CSXT" OR "User")

**Relating to CSXT's Limited Trackage Rights Over GTW between
GTW's connection to CSXT at Munster, IN and GTW's connection to the BNSF Railway
Company at Elsdon, IL on GTW's Elsdon Subdivision.**

TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT, entered into as of this 18th day of January 2010, by and between the **GRAND TRUNK WESTERN RAILROAD COMPANY**, (hereinafter referred to as "**GTW**" or "**OWNER**") and the **CSX TRANSPORTATION, INC.**, (hereinafter referred to as "**CSXT**" or "**USER**").

WHEREAS, GTW and CSXT entered into an agreement dated June 23, 1975, as amended, which, among other things, provided CSXT with limited trackage rights over GTW between Milepost 25.30 at Thornton Junction, IL and Milepost 30.92 at Munster, IN on GTW's South Bend Subdivision (now part of GTW's Elsdon Subdivision); and

WHEREAS, GTW owns and operates a segment of railroad located between GTW'S connection to CSXT at or near Milepost 30.92 at Munster, IN ("Munster") and GTW's connection to the BNSF Railroad Company ("BNSF") at or near Milepost 8.7 at Elsdon, IL ("Elsdon") on GTW's Elsdon Subdivision; and

WHEREAS, CSXT has requested trackage rights over GTW's railroad between Milepost 30.92 and Milepost 8.7 on GTW's Elsdon Subdivision; and

WHEREAS, GTW agrees to grant CSXT limited overhead trackage rights for the movement of certain traffic over GTW's railroad between Milepost 30.92 and Milepost 8.7 on GTW's Elsdon Subdivision, subject to the terms and conditions set forth herein.

NOW THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

SECTION 1.0 GRANT OF TRACKAGE RIGHTS

1.1 Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate, in overhead freight service only, its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segment of Owner's railroad as shown on the plan attached hereto, made a part hereof and marked Exhibit "A" (hereinafter referred to as the "Subject Trackage"):

1.2 Between GTW's connection with CSXT at or near Milepost 30.9 in Munster, IN and GTW's connection to the BNSF at or near Milepost 8.7 in Chicago, IL on GTW's Elsdon Subdivision, including (1) all sidings, yard tracks and yard leads now existent or hereafter constructed along the aforesaid tracks to be used hereunder, and (2) right-of-way for the aforesaid tracks, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use hereunder of the aforesaid tracks by the parties hereto, a total distance of approximately 22.2 miles.

1.3 Such rights shall include the right to enter and exit the Subject Trackage at:

1.3.1 GTW's connection with the Union Pacific Railroad Company ("UP") at or near Milepost 25.3 (Thornton Junction) on GTW's Elsdon Subdivision in Thornton, IL.

1.3.2 GTW's connection with CSXT at or near Milepost 22.6 (Harvey) on GTW's Elsdon Subdivision in Harvey, IL.

1.3.3 GTW's connection with Indiana Harbor Belt Railroad Company ("IHB") at or near Milepost 19.3 (B.I. Jct.) on GTW's Elsdon Subdivision in Blue Island, IL

1.3.4 GTW's connection with The Belt Railway Company of Chicago ("BRC") at or near Milepost 11.8 (Hayford Junction) on GTW's Elsdon Subdivision in Chicago, IL.

1.3.5 And any other existing or new location(s) that the parties may mutually agree upon.

1.4 Mileage Table:

Stations		Munster	Thornton Jct	Harvey	Blue Island	Hayford
	Mileposts	30.9	25.3	22.6	19.3	11.8
Thornton Jct	25.3	5.6				
Harvey	22.6	8.3	2.7			
Blue Island	19.3	11.6	6.0	3.3		
Hayford	11.8	19.1	13.5	10.8	7.5	
Elsdon	8.7	22.2	16.6	13.9	10.6	3.1

SECTION 2.0 USE OF SUBJECT TRACKAGE

2.1 User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement. Except as provided in Sections 2.1.1 and 2.1.2 below, Owner shall not grant other persons or Parties trackage rights over the Subject Trackage after the date of this Agreement, without the advance written consent of CSXT.

2.1.1. CSXT agrees that if GTW signs the Definitive Agreement Among the Participating Railroads for the CREATE Program ("CREATE Agreement") and the CREATE Agreement requires GTW to negotiate and grant trackage rights (subject to capacity and availability restrictions) for Participating Railroads (as defined in the CREATE Agreement) for access to the segment of the Elsdon Subdivision between Blue Island Junction (milepost 19.5) and Thornton Junction (milepost 25.2) that forms a portion of CREATE's Western Avenue Corridor, then GTW may negotiate and grant trackage rights subject to that requirement under the CREATE Agreement . GTW shall not have the right to negotiate or grant trackage rights under this Section 2.1.1 if CSXT executes a purchase and sale agreement with GTW to acquire an exclusive easement over the real estate comprising the Subject Trackage.

2.1.2. GTW may enter into interchange agreements with other parties, which shall grant operating rights over the Subject Trackage for purposes of interchange only. GTW shall not have the right to grant operating rights under this Section 2.1.2 for the purpose of interchange if CSXT executes a purchase and sale agreement with GTW to acquire an exclusive easement over the real estate comprising the Subject Trackage.

2.2 Except as may otherwise be provided by this Agreement, User shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing of cars or equipment, or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of Owner, preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purpose.

2.3 Owner shall have exclusive control of the management and operation of the Subject Trackage. User shall not have any claim against Owner for liability on account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause.

2.4 User shall have the right to operate in either direction over the Subject Trackage.

2.5 Owner and User shall work together to establish a schedule for the handling of User's trains.

2.6 User shall be responsible for contacting User's dispatcher and/or the UP, IHB and BRC dispatcher prior to entering the Subject Trackage to insure that User will not be delayed from departing Subject Trackage at the authorized exit location. User shall ensure that its trains i) have a clear route (or available offline staging capacity) beyond the Subject Trackage; ii) are not staged, held, stored, or parked on the Subject Trackage (except at the direction of Owner), or otherwise unreasonably interfere with the joint use of the Subject Trackage; iii) are staffed with qualified crews that have sufficient hours of service remaining to clear the Subject Trackage; and iv) restore all connection switches for mainline movement on and by Owner (collectively "Clearance Obligations").

2.7 User shall provide Owner with train information via AAR EDI 161 standard format and will include train symbol, estimated time of arrival, train length, tonnage, load/empty count, locomotives, end of train device.

2.8 The rights provided to User under the terms of this Agreement are for the sole purpose of User transporting its own traffic over the Subject Trackage. Nothing herein expressed or implied is intended to or shall be construed to confer upon or to give any person, firm, partnership, corporation or governmental entity other than the User any right or benefit under or by reason of this Agreement. User shall not move traffic for or on behalf of any other party or foreign railroad or under the guise of doing business as User.

SECTION 3.0 RESTRICTION ON USE

3.1 The trackage rights herein granted are granted for the sole purpose of User using same for bridge traffic only between the terminals (including those entry and exit locations defined in Section 1.0) of Subject Trackage and User shall not perform any local freight service whatsoever at any point located on Subject Trackage.

3.2 The total number of CSXT trains operating along this segment (including the existing movements between Munster, MP 30.92 and Thornton Junction, MP 25.3), shall be limited as follows:

- 3.2.1 three (3) train pairs (three (3) trains in each direction) per day between Munster, MP 30.92 and Thornton Junction, MP 25.3.
- 3.2.2 two (2) train pairs (two (2) trains in each direction) per day between Thornton Junction, MP 25.3 and Elsdon, MP 8.7;
- 3.2.3 CN may determine in its sole discretion, on a day-to-day basis, to permit additional CSXT trains between Munster, MP 30.92 and Elsdon, MP 8.7.

3.3 The trackage rights for CSXT traffic are designed to take into account current line capacity and the ability to enter and exit the line without blocked crossings, staging trains, or otherwise unreasonably interfering with CN and other users of the Subject Trackage. The parties acknowledge that these practical restrictions will effectively limit as a general matter the number of added CSXT trains on the Subject Trackage to those identified in Sections 3.2.1 and 3.2.2.

SECTION 4.0 COMPENSATION

4.1 The factor to be used in calculating payments to be made by User for the Trackage Rights covered by this Agreement shall be , (hereinafter referred to as the "Base Charge")

4.2 User will pay Owner a sum computed by multiplying: (i) the Base Charge, as may be revised in accordance with Section 4.5, by (ii) the number of loaded cars, locomotive and caboose units moved by User with its own crews and power over the Subject Trackage, by (iii) miles of Subject Trackage used as defined in Section 1.4 (Mileage Table). For purposes of this Agreement, each locomotive unit, each caboose, and each platform of an articulated car shall be counted as one car.

4.3 With respect to articulate units, the number of cars shall be determined by the AAR Car Type Code as defined in the ULMER Specification Manual The second character in the Car Type Code field covering codes "Q" and "S" will be the factor in determining the car count for an articulated unit. For example, AAR Car Type Code (S566) would equate to a five (5) car count as these type cars have five wells capable of handling 40' to 53' containers in each well. (Car count data for articulated units are subject to change upon development of technology to separate units by car numbers.)

4.4 User will furnish to Owner, in care of Manager Contract Compliance, or Owner's designate, at the end of each month, a statement of the number of loaded and empty cars operated over the Subject Trackage during the month. Based on this statement, Owner will render to User a bill, computed in accordance with the provisions of this Section 4, for User's use of the Subject Trackage.

4.5 The Base Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs subsequent to the base year, as hereinafter provided.

- (i) The Base Charge set forth in Section 4.1 of this Agreement shall be revised effective July 1st of each year, beginning July 1st, 2010 to compensate for the prior year increase or decrease in the cost of labor and material, excluding fuel,

as reflected in Table A, Annual Indices of Charge-Out Prices and Wage Rates (1977=100), Series RCR, included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads (hereinafter referred to as "AAR"). In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" index for the East District shall be used.

The Base Charge shall be revised by calculating the percentage of increase or decrease for the year to be revised based on the final index of the most recently completed calendar year as related to the final index of the calendar year prior to the most recently completed calendar year; and applying this percentage of increase or decrease to the current Base Charge to be escalated.

- (ii) By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for the calendar year (2008) prior to the most recently completed calendar year; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for the most recently completed calendar year (2009); and "C" to be the current Base Charge to be escalated; the revised Base Charge would be determined by the following formula:

$$B/A \times C = \text{Revised Base Charge, Rounded to Nearest Whole Cent (5 Mills or More Rounds to Next Cent)}$$

- (iii) In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indices of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the matter will be referred to the Surface Transportation Board for determination. In the event said Board is without jurisdiction to make such a determination, the parties shall submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator so appointed by said Association shall be final and binding upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees, and expenses of its own witnesses, exhibits, and counsel. The compensation, costs, and expenses of the arbitrator shall be borne equally by such parties.

PROVIDED, HOWEVER, that under no circumstances shall the per car mile rate ever be less than the established Base Charge provided for in this Section 4.1.

SECTION 5.0 PAYMENT OF BILLS

5.1 All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefore. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month.

5.2 The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of two (2) years from the date of billing.

5.3 Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 4, shall include direct labor and material costs, together with the surcharges, overhead percentages, and equipment rentals in effect at the time any work is performed by Owner for User.

SECTION 6.0 MAINTENANCE OF SUBJECT TRACKAGE

6.1 Owner shall maintain, repair, and renew the Subject Trackage at its own expense and with its own supervision and labor. Owner shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Subject Trackage or that operations there over will not be interrupted. Owner shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, except as may be otherwise provided in Section 12 hereof, User shall not by reason of failure or neglect on the part of Owner to maintain, repair, or renew the Subject Trackage, have or make any claim or demand against Owner or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from any such failure or neglect.

6.2 Owner shall also perform, at the expense of User, such additional maintenance as User may reasonably require or request.

SECTION 7.0 CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

7.1 Existing connections or facilities which are jointly used by the parties hereto under existing agreements or practices shall continue to be maintained, repaired, and renewed by and at the expense of the party or parties responsible for such maintenance, repair, and renewal under such agreements or practices.

7.2 Any additional connections to the Subject Trackage which may be required shall be subject to the Owner's approval (including design), which shall not be unreasonably withheld or delayed, and shall be constructed, maintained, repaired, and renewed as follows:

- (i) User or others shall furnish all labor and material and shall construct, maintain, repair, and renew at its sole cost, liability and expense such portions of the tracks located on the right-of-way of User or others which connect the respective lines of the parties hereto; and
- (ii) Owner shall furnish all labor and material and shall construct, maintain, repair, and renew at the sole cost, liability and expense of User such portions of the tracks located on the right-of-way of Owner which connect the respective lines of the parties hereto; and
- (iii) Upon termination of this Agreement, Owner may at its option remove such portion of trackage and appurtenances located on property of Owner, at the sole cost and expense of User. The salvage material removed shall be released to User or, as otherwise agreed upon, Owner will credit User the current fair market value for said salvage.

SECTION 8.0 ADDITIONS, RETIREMENTS AND ALTERATIONS

8.1 Owner, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, and retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

8.2 If User requests Owner to make changes in or additions and betterments to the Subject Trackage, including without limitation changes in communication or signal facilities, for purposes required to accommodate User's operations beyond that required for Owner's operation, Owner shall have the option to either make such changes in or additions and betterments to the Subject Trackage and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities, or to deny such request.

SECTION 9.0 MANAGEMENT AND OPERATIONS

9.1 When operating over the Subject Trackage, User's locomotives and crews will be equipped to communicate with Owner on radio frequencies normally used by Owner in directing train movements on the Subject Trackage.

9.2 Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of Owner's representative or his designee.

9.3 Before its locomotives enter onto the Subject Trackage, User shall request permission from Owner's dispatcher or other designated representative at Owner's rail traffic control center or such other location as Owner may designate. Further, User shall ascertain that said Subject Trackage is clear and shall await confirmation from said representative that such permission has been issued to allow User's movements on or over the Subject Trackage. Upon completing its operations and clearing the Subject Trackage, User will notify Owner's designated representative that it has completed its operations and that its equipment has cleared the Subject Trackage. Once User has notified Owner's representatives that it has cleared the Subject Trackage, User shall not reenter the Subject Trackage without again obtaining permission from Owner's representative. User shall provide and maintain at its expense all communication facilities needed as may be required by Owner to permit User to use Owner's trackage.

9.4 User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon Owner or its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, or employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of User to comply with its obligations in this regard.

9.5 User, in its use of the Subject Trackage, will comply in all respects with the safety rules, operating rules and other regulations of Owner, and the movement of User's trains,

locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all their directors, officers, agents and employees from and against all liabilities when attributable to the failure of User to comply with the provisions of this subsection.

9.6 All employees of User engaged in or connected with the operations of User on or along the Subject Trackage shall be required to pass periodic examinations on the rules of Owner related to the Subject Trackage, provided, with respect to such examinations that, upon request of User, Owner shall qualify one or more of User's supervisory officers on Owner's rules and such supervisory officer or officers so qualified shall examine all employees of User engaged in or connected with User's operations on or along the Subject Trackage. Pending qualification of train and engine crews of User, Owner shall furnish a pilot or pilots, at the expense of User, as deemed necessary by Owner, to assist in operating trains of User over the Subject Trackage. User shall pay to Owner, upon receipt of bills therefore, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.

9.7 Owner may request an investigation at its option if User's employee working on Owner's property is alleged to have violated Owner's rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. User will schedule the investigation and notify Owner's Local Transportation Officer in the territory. User's scheduling of the investigation must comply with the time limits provided in the applicable agreement on User's railroad. Owner will provide its regulations, supplements, and safety rules to User at no cost.

9.8 If Owner requests an investigation, Owner shall have the right to exclude from the Operating Trackage and Interchange Track(s) any employee of User, except officers, determined by Owner as the result of Owner's investigation or hearing described below, to be in violation of Owner's rules, regulations, orders, practices or instructions.

9.9 In a major offense including, but not limited to, violation of Rule G, dishonesty, insubordination, or a serious violation of operating rules or other offenses of comparable magnitude, wherein Owner desires to bar User's employee from service on Owner's territory pending an investigation by Owner, immediate verbal notification will be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.

9.10 If Owner requests an investigation, an Officer of User will conduct the investigation, but an officer of Owner may be present. After the investigation is concluded, a Transportation Officer of User will arrange to assess discipline, within the applicable time limits. If Owner recommends dismissal, User reserves the right to change the recommendation to the extent of barring the individual from operating over Owner's territory. User shall release, indemnify, defend and save harmless Owner and its officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.

9.11 If the disciplinary action is appealed by the employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not be

barred from service on the Operating Trackage or Interchange Track(s) by reason of such occurrence (unless an arbitration concerning such matter is held pursuant to this Agreement and this arbitration upholds Owner's continued exclusion of such employee).

9.12 It is understood that Owner shall reimburse User for all payments that User might be required to make as a result of a successful challenge being made by the employee or his representative as to the discipline recommended by Owner and assessed by User. User agrees to notify Owner before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, Owner will be given an opportunity to review User's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which User may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.

9.13 The trains, locomotives, cars, and equipment of User, Owner, and any other present or future user of the Subject Trackage or any portion thereof shall be operated on a first come, first service basis without prejudice or partiality and in such manner as will afford the most economical and efficient manner of movement of all traffic. Owner does not guarantee or otherwise promise to provide any particular transit or running times over the Subject Trackage. Further, Owner does not guarantee or otherwise promise that operations over the Subject Trackage will not be interrupted. However, Owner shall make best efforts to ensure that any interruptions will be kept to a minimum.

9.14 If by reason of any mechanical failure, insufficient hours of service remaining among User's crew, or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled or unable to proceed under its own power, or fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help, or push such trains, locomotives, or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.

9.15 If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by Owner and User shall reimburse Owner for the cost thereof.

9.16 In the event Owner and User agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such additional employees, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the additional employees not been provided.

SECTION 10.0 MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in User's account in User's trains on the Subject Trackage shall be assumed by User and reported and paid by it directly to the owner of such cars.

SECTION 11.0 CLEARING OF WRECKS

Whenever User's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, Owner shall perform such service, including the repair and restoration of roadbed, track, and structures. The cost, liability and expense thereof, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Section 12 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck shall be promptly delivered to User.

SECTION 12.0 LIABILITY

12.1 The responsibility and liability between the parties for: (i) any personal injury or death of any person (including employees of the parties and third parties), (ii) any real or personal property damage of any person (including property of the parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by the parties to this Agreement or by third party users, all of which are collectively referred to as a "Loss", will be divided as follows:

- (a) If a Loss results from the use of the Subject Trackage solely by the trains and locomotives of one of the parties to this Agreement, then that using party shall be solely responsible for the Loss, even if caused partially or completely by the other party.
- (b) If a Loss results from the use of the Subject Trackage by the trains and locomotives of both GTW and CSXT, then: (i) each of GTW and CSXT is solely responsible for any Loss to its own employees, locomotives and equipment in its own account including lading and (ii) GTW and CSXT are equally responsible for any Loss to the Subject Trackage and Loss sustained by third parties, regardless of the proportional responsibility between or among them as to the cause of the Loss.
- (c) If a Loss results from the use of the Subject Trackage by trains and locomotives of both CSXT and any other third party user of the Subject trackage not a party to this Agreement, then CSXT's responsibility for the Loss shall be apportioned in the manner specified in Subsection (b) with the other third party user being considered GTW for the purpose of determining CSXT's share of that portion of the Loss which it must assume.
- (d) Whenever any liability, cost, or expense is assumed by or apportioned to any party to this Agreement hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its subsidiaries and affiliates, and all of its respective directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the indemnitee or its directors, officers, agents or employees.
- (e) In every case of death or injury suffered by an employee of any party to this Agreement, when compensation to such employee or employee's dependents is

required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said parties under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

- (f) For purposes of determining liability, pilots furnished by GTW to CSXT pursuant to this Agreement shall be considered as the employees of CSXT while such employees are on board or getting on or off trains of CSXT.
- (g) If any suit or action shall be brought against any party for damages which under the provisions of the Agreement are in whole or in part the responsibility of the other party, said other party shall be notified in writing by the party sued, and the party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and cost, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.
- (h) In the event of a Loss as set out herein, the parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.
- (i) Notwithstanding the provisions of Section 18.5 of this Agreement, for the purposes of this Section 12 the word "equipment" shall mean and be confined to (i) trains, locomotives, cars and cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.
- (j) For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Section 7, all work performed by Owner shall be deemed performed for the sole benefit of User and, User shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance, repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of Owner. User shall protect, indemnify, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which User is responsible.

SECTION 13.0 INVESTIGATION AND CLAIMS

13.1 Except as provided in Subsection 13.2 hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

13.2 Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 and 49 C.F.R. Part 1005 (or any revised or substitute regulations adopted to modify, supplement or supersede the regulations herein

provided), or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709.

13.3 In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.

13.4 All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time employees, including claim agents, attorneys, and other employees of either party engaged directly or indirectly in such work shall be borne by such party.

13.5 Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Part 1005 or similar regulation, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds thirty-five thousand dollars (\$35,000).

13.6 Each party agrees to indemnify and hold harmless the other party and its parent corporation, subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, pursuant to a collective bargaining agreement. Except as provided in Section 16, it is the intention of the parties that each party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees.

13.7 It is understood that nothing in this Section 13 shall modify or waive the conditions, obligations, assumptions or apportionments, or supersede the provisions of Section 12 hereof.

SECTION 14.0 DEFAULT AND TERMINATION

14.1 In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner shall have the right at its option, after first giving thirty (30) days' written notice thereof by certified mail; and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Subject Trackage.

SECTION 15.0 DISPUTE RESOLUTION

15.1 If at any time a question or controversy shall arise between the parties hereto in connection with this Agreement upon which the parties cannot agree, either party shall have the right to require a meeting of designated representatives with authority to settle the matter within 30 days of written notice of a desire to meet; if it cannot be resolved within 30 days of the meeting of the parties, then the aggrieved party may demand arbitration. Unless other procedures are agreed to by the parties, arbitration between the parties pursuant to this Section 15 shall be governed by the rules and procedures set forth in this Section 15. For all purposes, this

Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, regardless of its conflicts of law's principles.

15.2 If the parties to the dispute are able to agree upon a single competent and disinterested arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any party (the notifying party) may notify the other party (the noticed party) in writing of its request for arbitration and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed party shall appoint an arbitrator and notify the notifying party in writing of such appointment. Should the noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the American Arbitration Association, which shall designate said appointment from the CPR Panel of Distinguished Neutrals, or other similar body of competent neutral arbitrators which may be agreed upon between the parties, upon application by either party after ten (10) days' written notice to the other party. The two arbitrators so chosen shall select one additional arbitrator to complete the board. If the arbitrators so chosen fail to agree upon an additional arbitrator, the same shall, upon application of a party, be appointed in the same manner hereto before stated.

15.3 Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence, determine the questions as disclosed in said notice of arbitration, shall give both parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as the arbitrator(s) shall deem reasonable or as either party may submit with witnesses required to be sworn, and hear arguments of counsel or others. If an arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom the arbitrator was chosen or the American Arbitration Association, as the case may be, shall appoint another to act in the arbitrator's place.

15.4 After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) may be entered as a judgment in any court in the United States of America having jurisdiction thereof and enforced as between the parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under this Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

15.5 Each party to the arbitration shall pay all compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

15.6 The parties may obtain discovery and offer evidence in accordance with the Federal Rules of Civil Procedure Rules 26 - 37, and Federal Rules of Evidence, as each may be amended from time to time.

SECTION 16.0 REGULATORY APPROVAL

- 16.1 Should implementation of this Agreement require the prior approval and authorization of the Surface Transportation Board ("STB"), User, at its own cost and expense, will initiate and thereafter diligently prosecute an action to obtain such approval and authorization or an exemption therefrom. Owner will assist and support efforts of User to obtain any such required approval and authorization or exemption.
- 16.1 Each party shall assume and hold the other party harmless from all employee claims predicated on loss of, or adverse impact on, compensation, benefits or working conditions arising from this Agreement or the activities of the parties hereunder, unless such claims are based on conditions imposed by the STB or predicated on the Railway Labor Act or labor agreements.
- 16.2 Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the arrangement; User, solely, shall be responsible for any and all payments in satisfaction of such conditions.

SECTION 17.0 ABANDONMENT OF SUBJECT TRACKAGE

- 17.1 Notwithstanding the provisions of Section 21 of this Agreement, Owner may abandon the Subject Trackage during the term of this Agreement, or any renewals hereof, upon giving User not less than ninety (90) days' written notice of Owner's intent to abandon. In the event regulatory authority is required to effect such abandonment, User will not interfere with Owner's actions to seek and to exercise such authority. In the event regulatory authority is required for User to discontinue its own operations over the Subject Trackage, User will seek and diligently pursue such regulatory authority at the same time that Owner seeks regulatory authority to abandon the Subject Trackage, or as soon thereafter as User may do so in accordance with applicable statutes and regulations, unless User intends to acquire the Subject Trackage from Owner pursuant to 49 U.S.C. Section 10904 or other similar provision. User hereby expressly reserves the right pursuant to 49 U.S.C. Section 10904 or any similar provision which may be in effect to subsidize operations on or to acquire the Subject Trackage. Unless User or another party acquires the Subject Trackage for continued rail use or subsidizes Owner's operations thereon, User shall exercise its authority to discontinue its operations pursuant to this Agreement upon the date established by Owner for abandonment of the Subject Trackage by its aforesaid notice to User, or upon the earliest authorized date of exercise of the regulatory authority to discontinue operations, whichever is later. If regulatory authority for discontinuance of User's operations is not required, User shall discontinue its operations hereunder on the date that Owner is authorized to abandon the Subject Trackage. Upon discontinuance of User's operations, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

SECTION 18.0 GENERAL PROVISIONS

18.1 This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against either of the parties hereto.

18.2 All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

18.3 This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties.

18.4 No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement.

18.5 As used in this Agreement, whenever reference is made to the trains, locomotives, cars, or equipment of, or in the account of, one of the parties hereto such expression means the trains, locomotives, cars, or equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars, or equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars, and equipment shall be considered those of the other party under this Agreement.

18.6 All words, terms, and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry.

18.7 This agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

18.8 Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement or as may be necessary or appropriate for a party hereto to enforce its rights under this Agreement, during the initial and any renewal term of this Agreement, all commercial information to which access is provided or obtained hereunder will be kept confidential and will not be disclosed by either GTW or CSXT to any party other than GTW's and CSXT's affiliates and the respective officers, employees, and attorneys of those affiliates, without the prior written approval of the other party.

SECTION 19.0 SUCCESSORS AND ASSIGNS

19.1 This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. No party hereto shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, by merger or otherwise, to any person, firm, or corporation without obtaining the prior written consent of the other party to this Agreement provided, however, such consent shall not be unreasonably withheld.

SECTION 20.0 NOTICE

20.1 Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may mutually agree, and shall be addressed as follows:

If to Owner:

Region Director Contracts and Administration
Grand Trunk Western Railroad Company
17641 South Ashland Avenue
Homewood, IL 60430

If to User:

Director Passenger & Joint Facility Agreements
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

20.2 Either party may provide changes in the above addresses to the other party by personal service or certified mail.

SECTION 21.0 COMMENCEMENT, TERM AND TERMINATION

21.1 This Agreement shall take effect immediately upon the later of (i) the date first written above, or (ii) the effective date of any required regulatory approvals. The date that User commences operations over the Subject Trackage shall be referred to herein as the "Commencement Date", and shall be evidenced by an exchange of correspondence between the appropriate officers of the parties hereto.

21.2 This Agreement shall continue in full force and effect for a period of twenty (20) year(s) from the Commencement Date, and shall continue in full force and effect, subject to renewal by either party, for an unlimited number of additional ten (10) year terms, provided, however, CSXT has the right to terminate this Agreement upon giving GTW a thirty (30) day advance written Notice.

21.3 Termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

21.4 Upon termination or non-renewal of this Agreement for any reason, User shall within sixty (60) days initiate and thereafter diligently prosecute any action to obtain approval from the STB or other regulatory body having jurisdiction authorizing abandonment or discontinuance of the Trackage Rights herein granted. If User fails to file within (60) days, User hereby expressly authorizes Owner to file with the STB, or other regulatory body having jurisdiction, on behalf of User to abandon

or discontinue the Trackage Rights granted hereunder, and User further agrees to reimburse Owner for all costs incurred.

21.5 If CSXT executes a perpetual easement with GTW for the Subject Trackage, this Agreement shall be placed in dormant status, as CSXT will no longer need the Agreement to govern its use of the Subject Trackage, however dormant status will not affect the escalation provision in Section 4.5.

SECTION 22

PRIOR AGREEMENTS

This Agreement shall terminate the agreement dated June 23, 1975 and as amended, including all verbal and written agreements that pertained to the trackage rights granted to CSXT to operate over GTW between Munster, IN and Thornton Jct, IL.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the day and year first hereinabove written.

WITNESS

GRAND TRUNK WESTERN RAILROAD
COMPANY



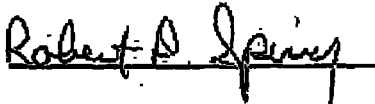
By: Paul E. Ladue

Paul E. Ladue
Region Director Contracts and Administration

Date: January 18, 2010

WITNESS

CSX TRANSPORTATION, INC.



By: Virginia M. Beck

Print Name: VIRGINIA M. BECK

Its: Director Passenger & Joint Facility Contracts

Date: 1/19/2010

Exhibit A

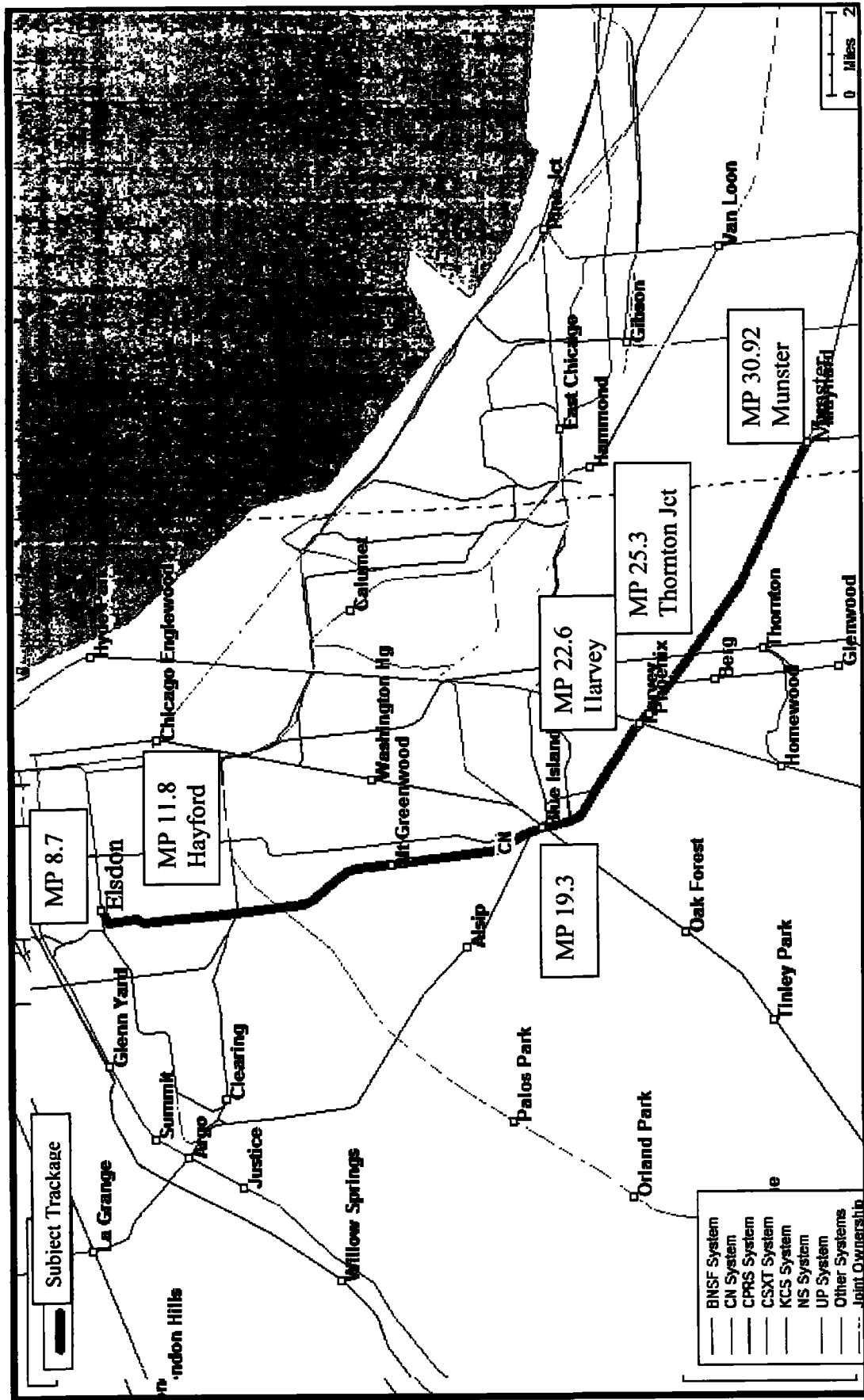


EXHIBIT C-FEDERAL REGISTER NOTICE

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 35326

CSX TRANSPORTATION, INC.—TRACKAGE RIGHTS EXEMPTION—
GRAND TRUNK WESTERN RAILROAD COMPANY

Grand Trunk Western Railroad Company has agreed to grant overhead trackage rights to CSX Transportation, Inc. between Munster, IN, milepost 30.92, and Elsdon, IL, milepost 8.7, a distance of approximately 22.22 miles (the “Elsdon Subdivision”). The trackage rights will be effective on or after February 27, 2010.

As a condition to this exemption, any employee affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Railway Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35326, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Steven C. Armbrust, CSX Transportation, Inc., 500 Water Street J-150, Jacksonville, FL 32202, and Louis E. Gitomer, Law

Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204,

Lou_Gitomer@verizon.net.

Dated:

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

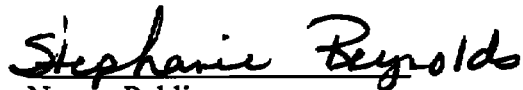
VERIFICATION

State of Florida)
)ss
County of Duval)

I, Virginia Beck, being duly sworn, depose and state that I am Director Passenger and Joint Facility Agreements of CSX Transportation, Inc., that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption, and know the facts asserted therein are true and accurate to the best of my knowledge, information and belief.


Virginia Beck

Subscribed and sworn to before me this 19th day of January 2010.

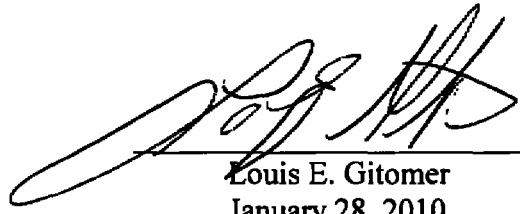

Notary Public

My Commission expires: 9-11-2012



CERTIFICATE OF SERVICE

I hereby certify that I have caused the Verified Notice of Exemption in Finance Docket 35326, *CSX Transportation, Inc.—Trackage Rights Exemption—Grand Trunk Western Railroad Company*, to be served by first class mail, postage pre-paid on the Secretary of the United States Department of Transportation, the Attorney General of the United States, the Federal Trade Commission and the Governor, Public Service Commission, and Department of Transportation of the States of Illinois and Indiana.



Louis E. Gitomer
January 28, 2010